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3 UNITED STATES DISTRICT COURT  
4 WESTERN DISTRICT OF WASHINGTON  
5 AT SEATTLE

6 AECON BUILDINGS, INC.,  
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8 Plaintiff,  
9 v.  
10 ZURICH NORTH AMERICA, et al.,  
11 Defendants.

Case No. C07-832MJP

ORDER DENYING WITHOUT  
PREJUDICE HARTFORD'S  
MOTION FOR SUMMARY  
JUDGMENT DISMISSAL OF  
PLAINTIFF'S CLAIMS FOR  
DAMAGES

12 This matter comes before the Court on Defendant Hartford Casualty Insurance  
13 Company's ("Hartford's") motion for summary judgment dismissal of Plaintiff Aecon's claims  
14 arising from Hartford's denial of Aecon's tender of construction defect property damages  
15 allegedly caused by Hartford's named insured, Chinook Builders, Inc. ("Chinook"). (Dkt. No.  
16 132.) Plaintiff opposes the motion. (Dkt. No. 167.) Having considered the motion and response,  
17 Defendant's reply (Dkt. No. 174), and the balance of the record, the Court DENIES Hartford's  
18 motion WITHOUT PREJUDICE to Hartford raising these issues in a motion in limine and/or  
19 motion for judgment as a matter of law.

20 Hartford asserts that Aecon will not be able to prove its damages at trial because Aecon  
21 failed to timely or otherwise designate a primary expert witness who will offer opinions on the  
22 nature of construction defects or construction repair costs including allocations of construction  
23 defects allegedly caused by Hartford's named insured, Chinook. Aecon intends to present the  
24 testimony of James Paustian on these issues. Hartford has not yet moved to exclude that  
25 testimony. The Court cannot decide Hartford's motion before it decides whether Mr. Paustian  
26 should be excluded from presenting testimony. Hartford may move to exclude Mr. Paustian's  
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1 testimony through a motion in limine, and then, if successful, may renew its motion for judgment  
2 as a matter of law to the extent it is applicable to Plaintiff's claims for damages against Hartford.

3 Because this motion is not ripe for consideration, it is DENIED WITHOUT PREJUDICE  
4 to Hartford renewing these issues at a later time.

5 Dated: August 15<sup>th</sup>, 2008.

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8 Marsha J. Pechman  
9 United States District Judge  
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